

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

WALTER W. THIEMANN, <i>et al.</i>,)	Case No. C-1-00-793
)	
Plaintiffs,)	(Judge Sandra S. Beckwith)
)	(Magistrate Judge Timothy S. Hogan)
-v-)	
)	
OHSL FINANCIAL CORPORATION, <i>et al.</i>,)	
)	
Defendants.)	
)	

**DEFENDANT PROVIDENT FINANCIAL GROUP, INC.'S MEMORANDUM IN
OPPOSITION TO "PLAINTIFFS' MOTION TO STRIKE OR OTHERWISE NOT
CONSIDER THE AFFIDAVIT OF TAYFUN TUZUN SUBMITTED WITH
PROVIDENT'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT"**

In his affidavit (the "Tuzun Affidavit"), Provident Senior Vice President Tayfun Tuzun testified that had Provident's net income been accurately stated prior to the Provident-OHSL merger, Provident's share price would have been at a maximum \$3.01 per share lower. A decrease in share price of \$3.01 would not have been material to a reasonable investor at the time of the OHSL-Provident merger because Provident's stock regularly fluctuated by \$3.00 per share during that period.

Plaintiffs have moved to strike the Tuzun Affidavit primarily on the ground that they do not think he was qualified to give the above-described testimony. As described in his Supplemental Affidavit (filed contemporaneously herewith and incorporated by reference), however, Mr. Tuzun, who is a Ph.D in Economics, clearly is qualified to render the opinions he has offered, and, in fact, appears more qualified than any of the purported experts offered by Plaintiffs. The focus of Mr. Tuzun's doctoral dissertation was the market valuation of commercial banks – the exact issue about which he testified. (Supplemental Tuzun Affidavit at ¶

2) While teaching at the University of New South Wales, Mr. Tuzun was awarded a government research grant to conduct valuation analyses on Australian banks. (*Id.* at ¶ 3) For the last ten years, Mr. Tuzun's job at Provident has required a detailed understanding of financial markets as well as financial valuation for commercial banks. (*Id.* at ¶ 4) Mr. Tuzun has also developed an extensive knowledge of projecting market reaction to various events. (*Id.*) These areas of expertise are directly relevant to Mr. Tuzun's affidavit testimony.

Provident intends to retain an independent expert who will testify on the issue of the materiality of the Restatements. However, because Plaintiffs filed their Motion for Summary Judgment *just three weeks* after they amended their complaint to add their Restatement claims, Provident did not have sufficient time to retain an expert on the subject.¹ Thus, to respond to Plaintiffs' motion in the time period allotted by the Federal Rules, Provident submitted Mr. Tuzun's affidavit.

The affidavit offers clear evidence that the errors corrected by the Restatements were not material to the valuation of Provident just prior to the Provident-OHSL merger. Plaintiffs respond to Mr. Tuzun's affidavit by criticizing his objectivity, accusing him of wrongdoing, and impugning his (un-impugnable) credentials. They do not, however, give this Court any reason to believe that his math is wrong. His affidavit, at the very least, demonstrates to this Court (1) that there are several different ways of analyzing the impact of the errors on the Provident-OHSL merger, making summary judgment on this issue inappropriate; and (2) that Provident should be entitled to additional time to retain an expert witness to testify on this issue.

For these reasons, Provident respectfully requests that the Court deny Plaintiffs' Motion to Strike.

¹ Provident has filed a motion for an extension of time to respond to Plaintiffs' Motion for Summary Judgment under Federal Rule of Civil Procedure 56(f). (doc. 271)

Respectfully submitted,

/s/ James H. Greer

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DEFENDANT PROVIDENT FINANCIAL GROUP, INC.'S MEMORANDUM IN OPPOSITION TO "PLAINTIFFS' MOTION TO STRIKE OR OTHERWISE NOT CONSIDER THE AFFIDAVIT OF TAYFUN TUZUN SUBMITTED WITH PROVIDENT'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT" was served upon the following, by ordinary U.S. mail, this 19th day of March, 2004 to following:

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